

RETURN DATE: April 9, 2019

DOCKET NO.:	:	SUPERIOR COURT
	:	
THE STRAND/BRC GROUP LLC,	:	JUDICIAL DISTRICT OF
5-9 WOODLAND AVENUE LLC,	:	STAMFORD-NORWALK
WOODLAND PACIFIC LLC AND	:	
WALTER WHEELER DRIVE SPE LLC	:	
	:	
V.	:	AT STAMFORD
	:	
BOARD OF REPRESENTATIVES OF	:	
THE CITY OF STAMFORD	:	March 18, 2019

APPEAL - COMPLAINT

TO THE SUPERIOR COURT for the Judicial District of Stamford-Norwalk at Stamford, on April 9, 2019, come Plaintiffs The Strand/BRC Group LLC, 5-9 Woodland Avenue LLC, Woodland Pacific LLC and Walter Wheeler Drive SPE LLC (“Plaintiffs”), aggrieved by and appealing from the decision of Defendant, BOARD OF REPRESENTATIVES OF THE CITY OF STAMFORD (“Board of Representatives” or “Board”) denying a proposed amendment to the Stamford Master Plan (“Master Plan”) previously approved by the Planning Board of the City of Stamford (“Planning Board”) under Application Number MP-432. Plaintiffs respectfully state as follows:

Parties

1. Plaintiffs The Strand/BRC Group LLC, 5-9 Woodland Avenue LLC, Woodland Pacific LLC and Walter Wheeler Drive SPE LLC are the owners of certain property commonly known as 707 Pacific Street; 5, 9, 17, 21, 23, 25, 29, 39 and 41 Woodland Avenue; and 796 Atlantic Street, Stamford, Connecticut (collectively, the “Property”).

2. Defendant Board of Representatives is a municipal legislative board located in Stamford, comprised of forty members, two of which are elected from each of twenty voting districts in the City.

Factual Background

Plaintiffs remediate the Property and engage in discussions with the Planning Board and members of the community for several years regarding its redevelopment.

3. Prior to Plaintiffs' acquisition of the Property, the Property had been used as a refuse and recycling collection and disposal operation. Since at least 1997, the City had identified the Property for redevelopment in its Master Plan. The City had urged affiliates of Plaintiffs for years to acquire the Property, clean it up and redevelop it into something attractive for the neighborhood and City. Beginning in 2015, Plaintiffs began acquiring the Property and, since acquisition, have undertaken remediation of the Property. After nearly two years of collaborative meetings with the staff of the Planning Board, the South End Neighborhood Revitalization Zone, a neighborhood organization (the "NRZ"), and other community stakeholders, Plaintiffs sought to take the next step to redevelop the Property into something attractive and beneficial for the neighborhood and City.

4. Specifically, on or about April 28, 2017, Plaintiffs filed an application for an amendment to the Master Plan seeking to have the Property changed from Categories 4, 6 and 9 to Category 9 ("Plaintiffs' Original Amendment"). Plaintiffs' Original Amendment was assigned number MP-424.

5. The purpose of Plaintiffs' Original Amendment was to allow for high density residential development on the Property. Although portions of the Property had been assigned Categories 4 and 6, which allow for up to between 29 and 44 units per acre and 17 and 25 units

per acre, respectively, these categorizations had always been considered “placeholders” by the Planning Board and Land Use Bureau. It was always contemplated by these bodies that the Property would be re-categorized to allow for greater density after the Property was remediated. The requested change to Category 9 would have allowed for up to 162 units per acre.

6. On or about June 27, 2017, Plaintiffs presented Plaintiffs’ Original Amendment to the Planning Board. Members of the public, including neighbors and representatives of the NRZ also spoke. Following the presentation and public comments, the Planning Board closed the public hearing and voted to postpone the decision until August 29, 2017.

7. On or about August 8, 2017, Plaintiffs presented a new scaled-down design concept to the NRZ in an effort to respond to comments expressed at the Planning Board’s public hearing and achieve a consensus for the redevelopment of the Property.

8. During this time, the Planning Board also initiated the South End Neighborhood Study (“Neighborhood Study”), which included an in-depth analysis of the South End neighborhood and would ultimately provide recommendations for future development in the neighborhood, including the Property.

9. On or about August 24, 2017, in order to reopen the matter for additional public comment, allow more time for discussions with the NRZ, and receive the benefit of the Neighborhood Study findings, Plaintiffs withdrew Plaintiffs’ Original Amendment.

10. Over the next year, Plaintiffs continued discussions with the City’s Land Use Bureau and the community, including the NRZ, and revised the conceptual design for the redevelopment of the Property several times in reaction to comments.

The Planning Board grants Plaintiffs an amendment to the Master Plan that is consistent with the recently completed South End Neighborhood Study.

11. On or about October 23, 2018, Plaintiffs submitted a new application for an amendment of the Master Plan seeking to have the Property changed from Categories 4, 6, and 9 to Categories 5 and 9 (“Plaintiffs’ Amendment”). Plaintiffs’ Amendment was assigned number MP-432.

12. Plaintiff’s Amendment differed from Plaintiffs’ Original Amendment in that the it included changes to Categories 5 and 9. Category 5 was included for a portion of the Property because it allows for less density than the original request that all of the Property be changed to Category 9. This change was made based on feedback from community members and Land Use Bureau staff. Category 5 allows for up to 108 units per acre, as opposed to up to 162 units for Category 9.

13. Plaintiffs’ Amendment was consistent with the recommendations contained in the Neighborhood Study, which had recently been completed. The Neighborhood Study recommended high density residential development for the entire block that contained the Property. Specifically, the Neighborhood study suggested 1,425 units on this block, whereas the Plaintiffs’ proposal called for 714 units on the block.

14. On its own initiative, the Planning Board staff sought a separate amendment to the Master Plan related to other properties located on the block (the “City’s Amendment”) that were not owned by Plaintiffs¹ and not part of Plaintiffs’ Amendment in any way. The City’s Amendment was assigned number MP-433.

¹ One of these properties, 12 Walter Wheeler Drive, is owned by an entity related to Plaintiffs but was not part of Plaintiffs’ Amendment.

15. On or about November 27, 2018, the Planning Board conducted duly noticed Public Hearings on Plaintiffs' Amendment and the City's Amendment and continued both hearings to January 2, 2019.

16. On January 2, 2019, the Planning Board modified Plaintiffs' Amendment to change the Property to Category 5 (instead of the requested changes to Categories 5 and 9), thus lowering the density of development allowed on the Property.² The Planning Board then approved Plaintiffs' Amendment, as modified, finding that the amendment was "fully in line with longstanding citywide and neighborhood specific planning policies" and would "help the South End to further revitalize in a way that serves both new and long-time residents."

17. At the same meeting, the Planning Board separately considered the City's Amendment and approved changing all of the areas referenced to Category 5. This was a modification of the application submitted by Planning Board staff.

18. On or about January 9, 2019, the Planning Board duly published a legal notice of its approval of Plaintiffs' Amendment, as modified by the Planning Board.

19. On or about January 9, 2019, the Planning Board also published a separate legal notice of its decision on the City's Amendment, as modified by the Planning Board.

Members of the community submit an invalid petition to the Planning Board seeking to challenge Plaintiffs' Amendment.

20. Section C6-30-7 of the Stamford City Charter ("Charter") provides, in part, that, "If twenty (20) percent or more of the owners of the privately-owned land in the area included in any proposed amendment to the Master Plan, or the owners of twenty (20) percent or more of the

² In addition, the Planning Board rejected the Plaintiffs' request to change a portion of one parcel from Category 9 to Category 5.

privately-owned land located within five hundred (500) feet of the borders of such area, file a signed petition with the Planning Board within ten days after the official publication of the decision thereon, objecting to the proposed amendment, then said decision shall have no force or effect but the matter shall be referred by the Planning Board to the Board of Representatives within twenty days after such official publication, together with written findings, recommendations and reasons.”

21. On or about January 18, 2019, Susan Halpern, purporting to act as Vice President of the NRZ, submitted a petition seeking review by the Board of Representatives of the Planning Board’s decisions to approve the Plaintiffs’ Amendment (MP-432) **and** the City’s Amendment (MP-433) (the “Petition”). The Petition did not separate its request for review of the Plaintiffs’ Amendment from the City’s Amendment.

22. Charter § C6-30-7 provides that the Planning Board shall only refer a protest petition to the Board of Representatives “**If** twenty (20) percent or more of the owners of the privately-owned land in the area included in any proposed amendment to the Master Plan, or the owners of twenty (20) percent or more of the privately-owned land located within five hundred (500) feet of the borders of such area” signed the petition. (Emphasis added.)

23. Therefore, before a petition can be considered by the Board of Representatives, the Planning Board must determine the validity of that petition.

24. The Board of Representatives, however, did not permit the Planning Board to first determine whether the Petition satisfied the criteria set forth in the Charter.

The Board's Counsel and Legislative Officer advise the Board that the Petition is invalid under the Charter because it does not have the requisite number of signatures.

25. Subsequently, on January 30, 2019, after review, research and advice from the City's Law Department, the staff of the Board of Representatives concluded that, although the petitioners filed only one Petition, which referred to both applications without distinction, there were in fact two separate applications heard and approved by the Planning Board. Each application was separate and distinct from the other. Therefore, the Board of Representatives concluded that the Petition must meet the standards of the Charter with respect to each application approved by the Planning Board.

26. The Legislative Officer for the Board of Representatives issued a memorandum to the Board of Representatives confirming that the Petition **did not meet the requirements of the Charter with respect to the Plaintiffs' Amendment**. Specifically, the Board's Legislative Officer concluded that the owners of **only 6.77%** of the privately-owned land within five hundred feet of the subject area signed the Petition, **far short of the 20% threshold** required by Charter § C6-30-7. The Legislative Officer also concluded that **0%** of the owners of land within the subject area signed the Petition, **also far short of the necessary 20% threshold**. Therefore, the Petition is invalid with respect to the Plaintiff's Amendment.

27. The Legislative Officer separately concluded that there were sufficient signatures with respect to the City's Amendment.

The Board's Land Use-Urban Redevelopment Committee first votes to reject the invalid Petition, but then, against the advice of its Counsel and staff, inexplicably reverses itself and votes to recommend that the Board accept the Petition.

28. Also on or about January 30, 2019, the Land Use-Urban Redevelopment Committee of the Board of Representatives (the "Committee") convened a meeting for the sole

purpose of addressing the validity of the Petition with respect to Plaintiffs' Amendment and the City's Amendment. Each amendment was listed separately on the Committee's agenda.

29. At that time, as reflected in the Committee's minutes, Ms. Halpern, on behalf of the NRZ, acknowledged that the Petition "was not valid as to Application MP-432 [Plaintiffs' Amendment]."

30. That day, the Committee, by separate motions, voted unanimously to reject the Petition as to Plaintiffs' Amendment and also voted unanimously to accept the Petition as to the City's Amendment.

31. On February 4, 2019, during a regular meeting of the full Board of Representatives, the Committee reported its finding that the Petition was invalid with respect to the Plaintiff's Amendment.

32. During the public comment portion that same meeting, the petitioners asked for reconsideration of the validity of the Petition as it related to Plaintiffs' Amendment. Notwithstanding Ms. Halpern's prior admission and the fact that Plaintiffs' Amendment and the City's Amendment were entirely separate applications with different application numbers, properties, owners, applicants, legal notices and decisions, the petitioners argued that Plaintiffs' Amendment and the City's Amendment were effectively one and, therefore, there were sufficient signatures to validate the Petition as it related to Plaintiffs' Amendment.

33. Following the petitioner's request to reconsider the Petition's validity, Nina Sherwood, a Board and Committee member, moved to send the review of Plaintiffs' Amendment back to Committee for reconsideration.

34. Ms. Sherwood then proceeded to vociferously advocate in favor of sending the matter back to the Committee for reconsideration of the validity of the Petition on the premise that the Board received “new information” that must be considered before the Board could make a decision on the validity of the Petition as it related to Plaintiff’s Amendment.

35. Notwithstanding Ms. Sherwood’s contention that “new information” had been received, multiple members of the Committee confirmed that no new information had been provided and that all Committee members had voted to accept the findings in the Legislative Officer’s memorandum and the companion opinion from the Corporation Counsel confirming that the amendments should be treated separately and that there were insufficient signatures to validate the Petition as it related to Plaintiffs’ Amendment.

36. The full Board of Representatives then voted to “hold” the matter as it related to Plaintiffs’ Amendment and send it back to the Committee for reconsideration of the validity of the Petition.

37. Thereafter, on or about February 11, 2019, the City’s Law Department issued a memorandum to the Board of Representatives further supporting the conclusion that the Petition was invalid as to Plaintiffs’ Amendment, confirming again that, because the two amendments “involved separate applicants, application numbers, property boundaries, amendments, legal notices and decisions,” the Petition as to each amendment had to be analyzed separately.

38. Also on February 11, 2019, the Committee met again to address the validity of the Petition with respect to Plaintiffs’ Application during a Special Meeting. That day, despite its prior unanimous decision to the contrary and the absence of any new information, the Committee

reversed its prior vote and voted 5-4 to **accept** the Petition as to Plaintiffs' Amendment, against the advice of its staff and counsel.

The Board of Representatives purports to vote in favor of accepting the invalid Petition as to Plaintiffs' Amendment despite lacking the necessary majority of members of the Board required by the Charter.

39. Immediately following the Special Meeting of the Committee, on February 11, 2019, the full Board of Representatives conducted a Special Meeting regarding the verification of the Petition as to Plaintiffs' Amendment.

40. Pursuant to Charter § C6-30-21, "in deciding **all matters** referred to the Board of Representatives pursuant to this Chapter [referral of challenges to Planning Board decisions to the Board of Representatives], the affirmative vote of a **majority of the entire membership of said Board** shall be required." (Emphasis added.)

41. The Board of Representatives is composed of forty members and, therefore, pursuant to the Charter, is required to obtain twenty-one votes in deciding all matters concerning petitions challenging decisions of the Planning Board.

42. At that meeting on February 11, 2019, only **seventeen members** of the Board of Representatives (four short of the necessary majority) voted in favor of accepting the Petition as to Plaintiffs' Amendment. Twelve members voted against accepting the Petition.

43. Therefore, the Board did not have the necessary number of votes required under section C6-30-21 to accept the Petition and lacked authority or jurisdiction to consider the Petition.

44. Thus, despite the fact that the Petition is invalid under section C6-30-7 as to Plaintiffs' Amendment, and despite the fact that the Board's vote to accept the Petition as to

Plaintiffs' Amendment did not comply with section C6-30-21, the Board considered the Petition to be valid as to Plaintiffs' Amendment and referred it to the Committee for consideration on the merits of the Planning Board's decision. Specifically, the Committee and the full Board of Representatives would be charged with stepping into the shoes of the Planning Board to consider the substance of Plaintiffs' Amendment.

The Board ignores the advice of its Counsel and Legislative Officer, and the recommendation of the Committee, and votes to reject Plaintiffs' Amendment.

45. On February 26, 2019, Plaintiffs' counsel sent a letter to the Committee chairs alerting them of the inadequacy of the Board's vote on February 11, 2019, and the absence of jurisdiction to consider the merits of Plaintiffs' Amendment.

46. On February 27, 2019, the Committee held a regular meeting and public hearing to consider the substance of Plaintiffs' Amendment. At the outset of the meeting, the Committee voted to go into executive session with Corporation Counsel to discuss the letter from Plaintiffs' Counsel received on February 26, 2019.

47. Following the break for private executive session, Plaintiffs' counsel, while reserving all rights regarding the jurisdictional issues raised in the February 26, 2019 letter, gave a presentation regarding the merits of Plaintiffs' Amendment. The City's Land Use Bureau also presented in favor of the Planning Board's decision to approve Plaintiffs' Amendment. Members of the public also spoke in favor of and against Plaintiffs' Amendment.

48. The Committee then voted 7-1 to "hold" the matter of the approval or rejection of Plaintiffs' Amendment until a subsequent meeting.

49. The Committee met again for a special meeting on March 4, 2019, for the purpose of considering the substance of Plaintiffs' Amendment. At that meeting, the Committee voted 5-

2-1 to recommend that the full Board **uphold** the Planning Board's approval of Plaintiffs' Amendment. Thus, the Committee, after conducting an extensive and lengthy public hearing and considering all facts and testimony, determined that the Planning Board made the correct decision in approving Plaintiffs' Amendment to the Master Plan.

50. A full regular meeting of the Board of Representatives was held later that evening on March 4, 2019. At that meeting, without the benefit of a public hearing to understand the facts or to hear from the Land Use Bureau, Plaintiffs or the public, the Board voted, in complete disregard of the recommendation of the Committee and the advice of its own counsel and staff, to **reject** Plaintiffs' Amendment by a count of 21-11-3.

The decision by the Board of Representatives to reject Plaintiff's Amendment was contrary to the Charter and other applicable law.

51. Charter § C6-30-7 states that the "Board of Representatives shall be guided by the same standards as are prescribed for the Planning Board under C6-30-3 of this Charter." Section C6-30-3 provides in pertinent part that the Master Plan "shall be based on studies of physical, social, economic, and governmental conditions and trends and shall be designed to promote with the greatest efficiency and economy, the coordinated development of the City and the general welfare, health and safety of its people." After thoughtful review and consideration, the Planning Board and Committee had found that Plaintiffs' Amendment furthered the policies and goals of the Master Plan and Neighborhood Study, including but not limited to, allowing higher-density residential development in close proximity to transit, encouraging the revitalization of the existing residential streets in the South End, the creation of new affordable housing and the relocation of industrial uses to non-residential areas.

52. The Board of Representatives, however, failed to follow the standards prescribed for the Planning Board, as required by Charter § C6-30-3, or make appropriate findings in accordance with said section, and upon information and belief, instead voted based upon political or other arbitrary or improper reasons or motivations.

53. The Board of Representatives also failed to issue a formal written decision regarding why it did not find the amendment in accordance with Charter § C6-30-3.

54. Charter § C6-30-12 provides that notice of decisions by the Planning Board with respect to proposed amendments to the Master Plan must be published in a newspaper “within five days after such decision has been made.”

55. In addition, General Statutes § 8-28 provides that “Notice of all official actions or decisions of a planning commission, not limited to those relating to the approval or denial of subdivision plans, shall be published in a newspaper having a substantial circulation in the municipality within fifteen days after such action or decision.”

56. Therefore, the Board of Representatives, which was acting as the Planning Board in rejecting Plaintiffs’ Amendment, was required to publish notice of its decision within five days of the decision pursuant to Charter § C6-30-12 and within fifteen days pursuant to General Statutes § 8-28.

57. The Board of Representatives, however, failed to publish notice of their rejection of Plaintiff’s Amendment within either five or fifteen days of its decision.

58. The Plaintiffs, the owners of the subject Property, have been aggrieved by the Board of Representatives’ purported “acceptance” of the invalid Petition, and by the Board’s

rejection of the Planning Board's approval of Plaintiffs' Amendment, which affects the subject Property.

59. The Board of Representatives acted illegally, arbitrarily and in an abuse of its discretion, and/or its actions are otherwise invalid, in that:

- a. The Board of Representatives erred by "accepting" the invalid Petition, which the Board otherwise did not have jurisdiction to consider, because it did not satisfy the requirements of Charter § C6-30-7 in that it did not contain either: (1) the signatures of twenty percent or more of the owners of the privately-owned land in the area included in the amendment, or (2) signatures of the owners of twenty percent or more of the privately-owned land located within five hundred feet of the borders of such area;
- b. The Board of Representatives erred by "accepting" the invalid Petition, which the Board otherwise did not have jurisdiction to consider, because only seventeen members of the Board voted in favor of accepting it, which does not satisfy the requirement of Charter § C6-30-21 that such decision be made by the affirmative vote of the majority of the entire membership of the Board;
- c. The Board of Representatives erred by "accepting" the invalid Petition, which the Board otherwise did not have jurisdiction to consider, because it did not permit the Planning Board to first determine whether the Petition was valid, as required by Charter § C6-30-7;

- d. The Board of Representatives erred in rejecting the Planning Board's approval of Plaintiffs' Amendment because it failed to follow and apply the standards set forth in Charter § C6-30-3, as the Board is required to do by section C6-30-7;
- e. The Board of Representatives erred in failing to publish notice of its decision to reject the Planning Board's approval of Plaintiff's Amendment, as required by Charter § C6-30-12 and General Statutes § 8-28;
- f. The Board's actions were arbitrary and irrational and completely ignored the advice of Corporation Counsel, the recommendations of the Planning Board and the Land Use-Urban Redevelopment Committee, the reports of the Board's Legislative Officer, and applicable law;
- g. Upon information and belief, members of the Board of Representatives engaged in improper conduct in that their decision was not based upon the standards promulgated in Charter § C6-30-3 but on political or other arbitrary or improper reasons or motivations that were predetermined;
- h. The Board of Representatives failed to comport with the requirements of the Charter; and
- i. The Board of Representatives erred in other respects that will be further specified when the record of its proceedings is filed.

PRAYER FOR RELIEF

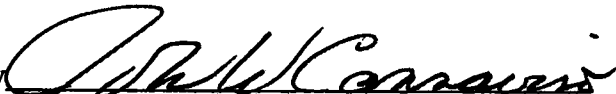
WHEREFORE, the Plaintiffs appeal from the decision of the Defendant, Board of Representatives of the City of Stamford, rejecting the proposed amendment to the Stamford Master Plan previously approved by the Planning Board under Application Number MP-432, and seek the following relief:

1. An Order and Judgment finding that the Board of Representatives did not have jurisdiction over the subject purported petition, as insufficient landowners signed the purported petition under Charter § C6-30-7, and thereby upholding the Planning Board's approval of Application Number MP-432 and sustaining this Land Use Appeal;
2. An Order and Judgment finding that the Board of Representatives did not have jurisdiction over the subject purported petition, as the decision to accept the purported petition was not made by the affirmative vote of the majority of the entire membership of the Board as required by Charter § C6-30-21, and thereby upholding the Planning Board's approval of Application Number MP-432 and sustaining this Land Use Appeal;
3. An Order and Judgment finding that the Board of Representatives did not have jurisdiction over the subject purported petition because the Board of Representatives failed to permit the Planning Board first determine whether the petition is valid as required by Charter § C6-30-7, and thereby upholding the Planning Board's approval of Application Number MP-432 and sustaining this Land Use Appeal;

4. An Order and Judgment finding that the rejection of the Planning Board's approval of Application Number MP-432 by Board of Representatives is invalid because the Board of Representatives failed to publish notice of its decision, as required by Charter § C6-30-12 and General Statutes § 8-28, and sustaining this Land Use Appeal;
5. An Order and Judgment overruling the Board of Representatives' decision to reject the Planning Board's approval of Application Number MP-432, and sustaining this Land Use Appeal;
6. The costs incurred in this proceeding as may be provided by law; and
7. Such other and further relief as this Court may deem just and proper.

THE PLAINTIFFS,
THE STRAND/BRC GROUP LLC, 5-9
WOODLAND AVENUE LLC, WOODLAND
PACIFIC LLC AND WALTER WHEELER
DRIVE SPE LLC

BY CUMMINGS & LOCKWOOD LLC
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For the Plaintiffs

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